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April 18, 2025

VIA ECF

The Honorable Judge Chen
United States District Court
Northern District of California
San Francisco Courthouse
Courtroom 5, 17th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Guardant Health, Inc. v. Natera, Inc., Case No. 3:21-cv-04062-EMC

Dear Judge Chen:

We write to report inappropriate public commentary about these proceedings by Guardant's trial counsel, Jennifer Keller and Chase Scolnick from the law firm Keller Anderle Scolnick LLP, at a recent event hosted by the Association of Business Trial Lawyers ("ABTL") in Los Angeles. Although I personally was not present at the public event, a series of consistent reports have reached me from multiple colleagues as well as from a series of attendees outside of my law firm—who came to us unsolicited to express concerns about what they observed. Those concerns are corroborated by various recordings and by a transcript of them, as attached.

For the reasons stated herein, counsel's conduct seems inappropriate (to understate the point). If it continues, it may imperil public perception of these proceedings and the fairness thereof. It should have gone without saying that counsel should not—especially while post-trial motions are pending and awaiting this Court's adjudication, and while an appeal may be looming by either or both sides—be mocking witnesses and forecasting Your Honor's upcoming rulings before a roomful of lawyers and judges. Because counsel's recent conduct was to the contrary, however, I am obliged to alert Your Honor while respectfully asking that counsel refrain from any recurrence.

On April 10, 2025, Ms. Keller and Mr. Scolnick presented an ABTL dinner program event: "*The Verdict that Shook the Industry – Guardant Health's \$292.5 Million Triumph Over Natera.*" As

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the ABTL aptly explains on its website, it “is unique in providing a forum in which litigators and judges meet together to address issues important to business trial lawyers.”¹

Present at this particular event were more than 100 observers, including judges. Ms. Keller and Mr. Scolnick took the opportunity to deride Natera and its MRD test, mock trial witnesses (whose faces and names they displayed to the audience) as “business bros” who cared only about money, cat-call from the podium to Quinn Emanuel attendees when discussing sanctions, and point out the supposed inadequacies of Guardant’s co-counsel at A&O Shearman. Most regrettably, before this audience including judges and lawyers—which could have included, for instance, future Ninth Circuit clerks—Ms. Keller and Mr. Scolnick predicted what Your Honor will rule and mocked the pending issue of jury confusion regarding “apples to oranges.”

By our respectful lights, the presentation did not reflect “appropriate civility, professional integrity, personal dignity, and respect for the legal system.” *See, e.g.,* Northern District of California Guidelines for Professional Conduct. Indeed, counsel’s approach to the presentation undercuts the professional, constructive, respectful interactions between counsel that stand to maximize agreement and minimize dispute as litigation continues. Even more concerning, the presentation was replete with “extrajudicial statement[s] that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.” Rule 3.6 of the ABA Model Rules of Professional Conduct. To be sure, judges and law clerks are cut from different cloth than potential jurors, but it does not follow that counsel should be deploying extrajudicial statements that stand to color the perceptions of would-be decisionmakers and suggest prejudgment of matters that this Court has yet to decide. The obvious prospect of an appeal by either side makes it especially problematic for one side’s lawyers now to be putting a heavy gloss on these proceedings before an audience that could include judicial decisionmakers. These concerns are magnified to the extent counsel plans to make the same or similar presentations in other venues.

A few key excerpts from the presentation are set forth below. A transcript made from audio recordings that together cover most of the presentation has been attached for the Court’s reference (no official recording of the entire event is available to counsel).

- After having attacked Natera and its witnesses at length, Ms. Keller and Mr. Scolnick focused the last ten or so minutes of their presentation on sanctions. Most notably, Ms. Keller predicted this Court’s ruling on Guardant’s pending sanctions motion by stating: “there are further sanctions coming. Judge Chen has made it clear he’s going to award attorney’s fees for the months that we spent chasing this -- this non-existent, fabulous, groundbreaking study, which he also found was misrepresented substantively. It didn’t say what they said it said. And then he’s going to have further sanctions -- according to his order, he’s going to explore exactly who was responsible, and he’s going to report that to the appropriate authorities.” Transcript 56:18-57:3. Suffice it to note that Ms. Keller’s account of what (according to her) has *already* been decided by this Court is out of step

¹ <https://abtl.org/about/>

with what (in actuality) *remains* to be decided, as reflected in the parties' pending submissions and upcoming hearings. *See* Dkts. 884-13 and 887, 929.

- Ms. Keller described Natera's conduct in terms that simply do not match the evidence, including by claiming that Natera sought to "bully" a junior female faculty member while deliberately avoiding her supervisor (Transcript 30:4-18), and had been "spying on oncologists at home, in their workplace, their IP addresses. It could be their kids doing their homework. It didn't matter." Transcript 38:1-3.
- Ms. Keller and Mr. Scolnick commented on evidentiary and instruction issues on which the Court has yet to rule, including the "apples to oranges" instruction that Natera argues departed from the law. Dkt. 880 at 19-21. Notwithstanding Natera's pending motion, Ms. Keller informed the audience that, under the Lanham Act, "apples to oranges" comparisons are per se misleading (Transcript 42:13-20), and Mr. Scolnick joked about bringing a fruit basket to counsel table for their closing arguments to drive that point home to the jury (Transcript 47:21-48:2)—a point directly related to Natera's arguments regarding jury confusion and prejudice.

In our respectful view, such statements go well beyond the bounds² of what is appropriate for a Continuing Legal Education program presented by the ABTL, or, for that matter, any such event. Such statements are all the more concerning to the extent they are directed at members of the judicial community (among others) and are suggesting Guardant and its counsel can control or predict rulings that Your Honor has yet to make.

To be clear, we are not writing to restrain counsel's zealous advocacy before this Court. Nor would we seek to muzzle anyone from sharing the public record of this proceeding or informative accounts thereof. But it is inappropriate for either party or its counsel to be distorting—in self-serving, inflammatory, and derisive fashion—the proceedings to date in ways that could be seen by the public as prejudicing forthcoming decisions and/or treating them as foreordained. That is what, regrettably, occasions this letter.

Respectfully submitted,

/s/ Derek L. Shaffer

Derek L. Shaffer

Enclosure

² Certainly such editorializing should not be mistaken for straightforward, faithful recounting of "information contained in a public record," of the sort contemplated by ABA Rule 3.6(b).

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GUARDANT HEALTH, INC.,)
A DELAWARE CORPORATION,)
)
PLAINTIFF,) CASE NO.
VS.) 3:21-cv-04062-EMC
)
NATERA, INC., A DELAWARE)
CORPORATION,)
)
DEFENDANT.)
_____)

REPORTER'S TRANSCRIPT OF AUDIO RECORDING
FILE TITLES (COMBINED):
"New Recording 316" and "New Recording 317"
AUDIO RUN TIMES: 0:57:56 and 0:10:06

JOB NO. 7330554
TRANSCRIBED BY: WHITNEY HESTER, CSR 14658

Page 1

AUDIO RECORDING

FILE TITLES (COMBINED):

"New Recording 316" and "New Recording 317"

AUDIO RUN TIMES: 0:57:56 and 0:10:06

(Whereupon, the audio recording titled "New Recording 316" started at timestamp 0:00:00.)

HOST: Justin Sanders of Sanders Roberts, our dinner chair -- our co-chair to introduce the speakers, and along with Justin, the speakers can come up. [Inaudible].

(Applause.)

HOST: Good evening.

(Inaudible background sounds.)

HOST: It's my distinct pleasure to see you [inaudible] wonderful guests [inaudible].

As they take their seats, first, I'll try to [inaudible] Jennifer Keller. Jennifer is a very fine lawyer who has tried somewhere north of 150 cases to jury verdict.

She began her career as a deputy public defender, who was known for having one jury out [inaudible]. She then spent over a decade in private practice working criminal defense case- -- criminal

1 defense matters before she switched gears to try civil
2 cases.

3 Jennifer has won a long list of awards. She has
4 won three separate CLAY awards for three jury wins in
5 three different areas: white collar, intellectual
6 property, and municipal law.

7 She's a member of the California Lawyers
8 Association, Trial Lawyer Hall of Fame, a law-guided
9 legend, and she's ranked in the Band 1 by Chambers USA
10 and Chambers Global for trials and commercial
11 litigation.

12 The Daily Journal has named Jennifer one of
13 California's Top 100 Lawyers for 17 years straight.

14 She's worked hard to assemble a boutique firm of
15 16 lawyers that she says are smarter than her.

16 That's pretty scary.

17 And they're crazy enough to try cases before a
18 jury.

19 And if you've ever been to her office, they also
20 have a beautiful art collection [inaudible].

21 (Inaudible background sounds.)

22 HOST: So, first, give a warm round of applause
23 for Jennifer.

24 (Applause.)

25 HOST: And seated next to Jennifer is Chase

1 Scolnick. And, yes, he is the brother of our current
2 president, in case you were wondering.

3 Chase is one of the most accomplished trial
4 lawyers of his generation, having tried over 50 jury
5 trials to verdicts, all in federal court.

6 (Inaudible background sounds.)

7 HOST: As we -- or according to his counsel,
8 "with remarkable success."

9 Chase began as a deputy federal public defender,
10 and, approximately a decade ago, he made a transition to
11 business litigation in the intellectual property cases
12 with Keller/Anderle.

13 He's also won many awards, including his own
14 CLAY award, the Daily Journal's Top 100 Lawyers in
15 California and the Lawdragon 500 Leading Lawyers in
16 America.

17 Along the way, Chase has become a trusted
18 advisor to several general counsels of major companies.
19 He was the architect of the Guardant versus Natera case
20 we're going to hear about today and that trial strategy.

21 And he, along with Jennifer, has successfully
22 defended notable individuals, such as Kevin Spacey in
23 the Southern District of New York.

24 (Inaudible background sounds.)

25 HOST: So without further ado, I'd like to

1 introduce Chase Scolnick.

2 (Applause.)

3 HOST: So enjoy the program and have a good
4 evening.

5 (Inaudible background sounds.)

6 JENNIFER KELLER: The firm name now is Keller
7 Anderle & Scolnick. So...

8 (Applause.)

9 JENNIFER KELLER: Not [inaudible].

10 (Laughter elicited.)

11 JENNIFER KELLER: And that was really in
12 recognition of your superb job that Chase did for us.

13 Our firm very deliberately assembled some people
14 who had significant experience in the criminal justice
15 system. We had the U.S. Attorney's office, the federal
16 public defender, county public defender, county DA's
17 office, on the one hand; and then the other -- the other
18 side of the office was people who had various
19 significant civil litigation experience from big firms,
20 who keep us from "stepping in it" too bad.

21 So, anyways, we are here for the sole purpose of
22 shamelessly bragging about our verdict.

23 (Laughter elicited.)

24 JENNIFER KELLER: We intend to tell you many war
25 stories.

1 No.

2 Anyway, let me tell you a little bit about our
3 case and what it was about.

4 We represent -- and we still represent -- a
5 company called Guardant Health. Guardant Health is in
6 the forefront of what are now known as liquid biopsies
7 for cancer detection.

8 What that means is that instead of having to
9 take a piece of tissue or tumor and look at it to
10 determine if the cancer is present, Guardant Health has
11 come up with a unique way to measure these
12 infinitesimally, small amounts that were known as ctDNA,
13 circulating tumor DNA, because cancer, cancer tissue,
14 just like healthy tissue, as the cells die, they shed
15 into the bloodstream.

16 And so the two founders of Guardant Health, who
17 were engineers, PhDs from Stanford in -- in electrical
18 engineering and computer science, they figured out a way
19 to do these measurements.

20 They started with colorectal cancer because
21 it's -- it's a very prevalent cancer, and there was a
22 huge data set of data because of all the colonoscopies
23 that were done.

24 They were not oncologists; they were data
25 scientists. They learned how to see data sets, but they

1 brought in oncologists to work with them. And they
2 created this fantastic company.

3 (Inaudible background sounds.)

4 JENNIFER KELLER: So fast forward to about 2018.
5 They have come up with this incredible test that they
6 later called Reveal that would be able to detect the
7 recurrence of what's known as Minimal Residual Disease
8 in colorectal cancer patients who had had surgery, and
9 they needed chemotherapy or radiation.

10 The biggest fear you have as a cancer patient
11 who has had that surgery is "Did they get it all?" or
12 "Did they miss something? Is it going to come back and
13 kill me?" and so monitoring to see if there's any
14 Minimal Residual Disease is really critical to survival.

15 There's a company out there, Natera. Natera was
16 the only company that was doing that kind of testing,
17 but they didn't have a blood-only test. Their tests
18 required tissue.

19 So when the doctors did the surgery, they would
20 take a tissue sample; they'd send it out to be typed.
21 The person would then have chemo or radiation. 30 days
22 later, they'd take a blood sample; they'd send that out
23 to another lab. They'd try to crossmatch the two.
24 They'd try to figure out if there was Minimal Residual
25 Disease. And it took a long time.

1 It took six or eight weeks, Chase?

2 He's the brains of the operation; so I ask him
3 these questions.

4 Meanwhile, Guardant's test is a simple blood
5 test. At the 30-day mark, they take a blood test, send
6 it out, and five days later, you got your answer.

7 So instead of lying awake at night, wondering,
8 "Did they get it all?" you know right away.

9 And that early stage, of course, is the most
10 treatable stage.

11 So Natera got wind of the fact that Guardant had
12 developed this test. They panicked. They decided to
13 "destroy" the company's test in the "crib," to "kill it"
14 before it ever got off the ground, do anything they had
15 to do to kill it because they saw it as an existential
16 threat.

17 So, Chase, take it away.

18 CHASE SCOLNICK: Thank you, Jennifer.

19 And thank you all for having us here tonight.
20 It's really an honor to be here.

21 And thank you to my brother, Kahn, who's the
22 president.

23 And if you all think that we both look like each
24 other now, we were dead ringers in high school. I tell
25 people my high school years were four years of breaking

1 the rules and having Kahn pick up the tab.

2 (Laughter elicited.)

3 CHASE SCOLNICK: The teachers couldn't tell us
4 apart. So I would always say my name was Kahn. So Kahn
5 found his way to the principal's office pretty
6 frequently.

7 (Laughter elicited.)

8 CHASE SCOLNICK: So hopefully he's not holding a
9 grudge [inaudible].

10 Okay. So what we want to start out with this is
11 talking about just how complex this case was.

12 So Jennifer broke it down and gave us an intro,
13 but -- but, really, we're talking about complex science
14 and advertisements that deal with statistics and
15 analysis and -- and numbers that are so complicated that
16 most oncologists don't even understand them.

17 So we have here on the slide a statement from
18 Judge Chen, who, to anyone who has litigated in Northern
19 California, is a brilliant judge, a wonderful man. And
20 after two or three years of knowing the case, this is
21 what he said. Right. That, even after reading all the
22 papers, he struggled to understand it.

23 And if he struggled to understand it, if it was
24 going to be Greek to him, it was going to be Latin to a
25 jury. And that's something that we struggled with

1 throughout the case.

2 So this is an example of the material.

3 And, Jennifer, if you want to talk about it, how
4 we came into the case...

5 JENNIFER KELLER: Yes.

6 There was a large international firm handling
7 the case. The lawyers were very, very bright and expert
8 in the -- in the law of false advertising and expert in
9 the science.

10 Because Natera's defense was "everything we said
11 is true. We have the superior test. They were
12 dangerous. We had to alert the public," And that's why
13 they put all this stuff out.

14 Of course, none of that was true. But...

15 CHASE SCOLNICK: Right.

16 So when we came into the case, as Jennifer said,
17 there was another firm on the case. And one of the --
18 the issues we had is picking up where they left off.

19 I think general counsel looked at the -- at the
20 case and -- and saw them as being wonderful through
21 summary judgment, but the case wasn't dismissed on
22 summary judgment. So we had to pick up and proceed to
23 trial.

24 And when we came in, it was specifically for the
25 purpose of -- of trying the case and turning this case

1 from something that was very dense and -- and scientific
2 at the -- at the motion stage and try to translate that
3 to a jury.

4 So although they were wonderful, they didn't
5 have as much experience in front of the jury as we have.

6
7 So we -- we looked at the case and immediately
8 noticed that the -- the outlines with the questions that
9 were put to the jury were a bit alienating and -- and
10 over the juror's head.

11 And so this is a perfect example of a question
12 here that we started off with and -- and how we changed
13 it. Right.

14 I mean, immediately you see this, if you're
15 trial attorneys, that the -- that the introductory
16 phrase is going to alienate the jury: "For the benefit
17 of the jury." Right.

18 And -- and almost every outline we looked at 30
19 or 40 or 50 times, you see these phrases.

20 And if you're telling the jury or asking the --
21 the witness in front of the jury "for the benefit of the
22 jury," what are you really saying?

23 You're saying, "Well, the jury is not as smart
24 as I am" -- right -- "and so I am going to dumb this
25 down for them."

1 So immediately we eliminated those types of
2 phrases, and we drove things down.

3 These complex concepts -- hazard ratios,
4 confidence intervals -- were easily translated into --
5 into more fundamental concepts that were understandable.

6 Ultimately, if you start off with what a hazard
7 ratio is and you can explain exactly what it is, or you
8 can just break it down and say, "This is just another
9 measurement of how good a test is at detecting cancer."

10 So this is a perfect example of what we came in
11 to accomplish.

12 JENNIFER KELLER: Chase and I both began our
13 careers, as you heard, as deputy public defenders.

14 And in my own case, I would hear many deputy DAs
15 say things like, "Ladies and gentlemen of the jury, I
16 submit to you." And I would think, "Oh, that's good
17 because who talks like that?" Right.

18 (Laughter elicited.)

19 JENNIFER KELLER: It's very alienating.

20 Or -- or just, you know, "Did you have occasion
21 to observe the light from the vehicle?" You know, who
22 talks like that?

23 And so this was the scientific version of that:
24 "I'm so much smarter than you are that I need to speak
25 to you in these phrases. Unfortunately, you will be

1 unable to understand them."

2 And so it's kind of like the elevator pitch. I
3 tell people sometimes, "If you can't explain to me your
4 case in a 30- to 60-second elevator pitch, you're going
5 to lose."

6 So Chase and I spent a lot of time trying to
7 figure out how to translate these complex concepts
8 into "more understandable."

9 We didn't have a stupid jury at all. We had a
10 great jury. It was a Northern District of California,
11 San Francisco, Bay Area jury. Bright people.

12 The foreperson was a graduate of the London
13 School of Economics.

14 But we also had some people who were
15 working-class jurors; very bright but not necessarily
16 highly educated in the sciences.

17 And so we started working on that fairly
18 immediately.

19 CHASE SCOLNICK: So this is the ad. Right.

20 Also, this was a false advertising case. And
21 this was the ad that was put out to physicians around
22 the country.

23 Normally, when we think about an advertiser,
24 we're thinking about Coke versus Pepsi; something that's
25 easily -- easy to understand and grasp, but the target

1 audience was oncologists.

2 So if you look at this, it does look like Greek
3 or Latin, or pick your foreign language that you don't
4 understand, because most -- most any juror wouldn't
5 understand this. You've got very highly complex
6 scientific concepts and comparisons.

7 So what this is meant to represent is on the
8 left side you have Signatera, which is our competitor,
9 Natera's product; and

10 On the right side, you have Guardant's product:
11 Reveal.

12 And if you look at it as a comparison in all
13 those different metrics -- right -- and without knowing
14 anything else, you see that the numbers on the left look
15 better than the numbers on the right.

16 So without knowing anything else, it looked
17 like -- and to oncologists it looked like, oncologists
18 who were very busy, who have a practice, who are --

19 And if any of you have the misfortune of having
20 to go to an oncologist's office, you know that you have
21 to wait. Right. There's a long waiting list, and
22 they're very in demand. And they don't have time to
23 look at all the footnotes and tiny print at the bottom.

24 So this was -- this was targeting them and --
25 and, as we're going to explain, is highly misleading.

1 But how do we translate this to a jury. Right.
2 A jury who, although smart and sophisticated, probably
3 don't have the scientific background to understand all
4 of these concepts, statistical and medical.

5 So what we did is we used a number of
6 strategies. And we're gonna talk about those strategies
7 for the balance of this evening.

8 And I can't see all of them here; although, I
9 wrote the outline.

10 (Laughter elicited.)

11 CHASE SCOLNICK: You all can see them. And
12 we're going to go through them one by one.

13 [Inaudible]. Got [inaudible].

14 UNIDENTIFIED SPEAKER: The first is "Compelling
15 Stories."

16 "Compelling Story." Thank you.

17 [Inaudible], Folks.

18 (Laughter elicited.)

19 CHASE SCOLNICK: Okay. So as Jennifer said at
20 the top, we had the honor of representing Guardant
21 Health.

22 Guardant Health was created by two scientists
23 who were not doctors. They were not oncologists. They
24 had no medical background. They were engineers, and
25 they sought to conquer cancer with data.

1 Although they were studying engineering at
2 Stanford, they became part of the Human Genome Project,
3 which was involved in decoding the human genome.

4 And under their watch, they brought decoding the
5 human genome from a one- or two-billion-dollar project
6 down to about a thousand dollars. That was a huge
7 accomplishment.

8 But what they saw in the companies they were
9 working for was that this technology was not being
10 leveraged to -- to help people. So they started
11 Guardant Health. And they realized that there was a
12 wonderful application to cancer.

13 So this is an example of their technology.

14 And with cancer what you have is a disease of
15 tumors. Right. Regardless of where it is, there are
16 tumors that grow on the body. And these tumors are
17 quickly growing. And as they grow, they're also dying.
18 And when they die, they shed little, tiny microscopic
19 pieces of tumor. And those pieces of tumor are called
20 ctDNA, or circulating tumor DNA. And they're -- they
21 circulate throughout the blood.

22 So the folks at Guardant, they developed a test
23 that detects these tiny pieces of tumor in the blood.
24 So you don't need to have a biopsy. You don't need to
25 have some -- a full body scan. You only need a simple

1 blood test to determine whether the cancer is in the
2 body.

3 And why is this important?

4 In the context of Minimal Residual Disease, for
5 example, in colorectal cancer, people, if you find it
6 early enough, you have a surgery, you have it removed,
7 But sometimes, unfortunately, it comes back. It depends
8 on what stage you're at. Obviously, the later the
9 stage, the greater the likelihood it's going to come
10 back.

11 So the standard of care is on the right side.
12 And it's CT scans. And we all are familiar with the
13 CT scans.

14 The problem with CT scans is that for a tumor to
15 become detectable on a CT scan, it takes about
16 one billion cells. That's how big it has to be
17 physically.

18 And by the time you have one billion cells in a
19 tumor, after it's recurred, the cancer is pretty much
20 inoperable. Okay. It spread too far.

21 So what we have at Guardant is 30 days after
22 your surgery, you're able to take this simple blood
23 test, and it searches for the markers that are
24 consistent with cancer. And this gives people a
25 tremendous advantage -- right -- because at that point

1 it's truly [inaudible].

2 And that brings us to our competitor:

3 [Inaudible].

4 While ours was a simple blood test, they need
5 tumor, they need a biopsy. [Inaudible]. And for their
6 test to work, they have to sequence that tumor, break
7 off a piece of that tumor, send it off to a third party;
8 and they look at that tumor and decode it.

9 And then a month, two months later, you take a
10 blood test, and they look for markers of that specific
11 tumor in the blood.

12 And that sounds like a great program, but the
13 problem is in the details.

14 Now what I mean by that is there are all kinds
15 of problems logistically with -- with that first stage:

16 People lose the tumor. If you're undergoing the
17 modern-cancer treatment, is -- before you have surgery,
18 you have chemotherapy. And if you have chemotherapy
19 before surgery, the tumor is too small to sequence.

20 So there's a large group of people -- and I'm
21 going to explain and show you a graphic for -- who
22 cannot use this test.

23 And this is Dr. Corcoran. He's one of the
24 leading oncologists in the world. He is a doctor at
25 Harvard -- he is a teaching doctor at Harvard Medical

1 School.

2 And he explains that there are some times where
3 you just don't have sufficient tumor tissue to use
4 Natera's test.

5 And Natera themselves, while they told people
6 publicly, and they told the jury at trial that their
7 test can be used for everybody, that's just not true.

8 Behind the scenes, when no one was looking, you
9 can see in this email here, they acknowledge that there
10 are significant problems logistically with their test.

11 It takes weeks to months for them to get a
12 result, tissue is lost, and people just can't use their
13 test.

14 And it sounds like it's not a big deal if you
15 are discussing a week -- I'm sorry -- a month, two
16 months, three months, four months of a delay to get the
17 results for Signatera. But if you think about it, if
18 you're a cancer patient and you're desperate to learn
19 the results of -- of your test, you want to find out if
20 it came back.

21 If you're up all night thinking about this, and
22 thinking about it for two months, three months, whatever
23 the delay is for Signatera, it's huge. It's
24 life-changing.

25 And what's happening during those three months?

1 The cancer is growing. It's becoming closer to being
2 inoperable.

3 So...

4 JENNIFER KELLER: And if you're one of those
5 people who cannot use Signatera's test at all, you're
6 going to have to wait until it's big enough to be seen
7 on a scan, at which point it's probably too late.

8 So the people who testified, who said that
9 Dr. Corcoran was wrong -- one of the premiere
10 oncologists in the entire world and an expert, in
11 particular, in this technology and in this kind of
12 cancer -- one was an MBA and the other had a bachelor's
13 in biology, and they were executives, But they were
14 certain about that.

15 They didn't even put an oncologist on the stand.

16 Gee, why could that be?

17 I don't know. Why would you put a bunch of
18 "business bros" on the stand instead of an oncologist to
19 talk about this. Anyway...

20 The jurors had the same question.

21 (Laughter elicited.)

22 CHASE SCOLNICK: So the business bros and the
23 MBAs at Natera, they claim that "there are only about
24 2 percent, if that, who couldn't use their test," but
25 that's -- that's just not true.

1 In truth -- and we had multiple oncologists
2 testify at trial. There are about 30 percent of
3 CRC patients who cannot use the Natera's -- Natera's
4 test because they just don't have sufficient tissue.
5 There are other issues with it.

6 And when you think -- when you think about CRC,
7 there are tens of thousands or hundreds of thousands of
8 people in the country and -- and millions around the
9 world who suffer from CRC and who recovered, 30 percent
10 is a tremendous number. And Natera's leaving those
11 folks out in the cold.

12 Guardant, on the other hand, everyone can use
13 Guardant's test. Right. Regardless of whether they
14 have sufficient tissue or not, it's a simple blood test.

15 So this made up for that 30 percent of those
16 tens of thousands of people, and it brought them in from
17 the cold.

18 JENNIFER KELLER: But Natera was determined that
19 no one would be able to use these tests, including that
20 third of patients. And they did whatever they could to
21 sabotage us from getting into the market.

22 CHASE SCOLNICK: So, again, we're not able to
23 look at all these emails, but for the next phase of our
24 presentation, we want to show you the internal emails
25 from Natera, from the senior management, including the

1 CEO, the vice presidents.

2 And when they learned that Guardant was coming
3 out with this test that could be used by everybody, that
4 didn't have the logistical problems of their test, they
5 panicked.

6 Think we can [inaudible]. Take a look.
7 [Inaudible].

8 (Laughter elicited.)

9 CHASE SCOLNICK: [Inaudible] singer.

10 (Laughter elicited.)

11 CHASE SCOLNICK: Okay. So this is an email from
12 Natera's CEO.

13 And, of course, our product development was --
14 was called LUNAR. So what they did, they set up a
15 project -- a project that was designed to target our
16 test. Right.

17 And if you look at some of the -- some of the
18 fears and the internal concerns, you have:

19 "This can crush our growth," and

20 "We need to have a war room." Right.

21 "This is high priority, priority number one."

22 "This will completely derail us if we messed up
23 here. We need to go to the mat."

24 JENNIFER KELLER: And, incidentally, they
25 started on this campaign before there was even a

1 clinical study published about our test. They just got
2 wind of it, and it was, "Uh-oh. 'Blood only.' 'Liquid
3 biopsy.' This could kill us. So we're going to start
4 to destroy them. We're going to put together a plan now
5 to destroy them" Years before we even had a publication.

6 CHASE SCOLNICK: And here we go again with
7 another example.

8 Remember that these are health care
9 professionals. Right. They're supposed to be focused
10 on defeating cancer. The war should be attacking the
11 cancer and saving people's lives.

12 But, unlike Guardant, which was focused on that
13 war, the only war that Natera was focused on was it was
14 a war for profits and a war against Guardant.

15 And here you see the CEO again saying, "We need
16 to be laser focused on the CRC" -- which is colorectal
17 cancer -- "land grab or we will lose to Guardant. We
18 need to put more intensity. This is the war we're
19 entering."

20 So, as you can imagine, this language was -- was
21 wonderful for the jury. Thematically. Instead of the
22 war against cancer, you've got a war with competitors, a
23 war for profit, a war that prioritizes the bottom line,
24 instead, over public health.

25 Oh, here we are.

1 This is the CEO Steve Chapman.

2 (Laughter elicited.)

3 CHASE SCOLNICK: We all have these -- we all
4 have these unfortunate emails in our case, but I think
5 you can imagine this one.

6 For Natera, this was the entire theory and
7 strategy: "We need to be more aggressive here. We need
8 to spend whatever is necessary to salt [phonetic] their
9 launch." Right.

10 JENNIFER KELLER: Notice what it doesn't say.
11 It doesn't say, "Their test is dangerous. To protect
12 public health, we must educate oncologists immediately."

13 They didn't say that.

14 (Laughter elicited.)

15 CHASE SCOLNICK: So, needless to say, this is
16 fun impeachment because when Mr. Chapman came into court
17 and explained that this was all benevolence and to
18 correct the record and try to make sure that the public
19 is safe, you know, this email is, obviously,
20 inconsistent.

21 So here's an email from their president of
22 Clinical Diagnostic, who I was fortunate enough to
23 cross-examine during trial.

24 This is just another example of his emails.

25 And, again, it wasn't focused on -- on some

1 legitimate advantage that their product had over -- had
2 over ours or concern for public safety.

3 They wanted to "pound GH," "pound Guardant
4 Health." Right.

5 (Inaudible background sounds.)

6 CHASE SCOLNICK: And you think about how
7 offensive that is in the space that they are in. A
8 company that is supposed to be fighting cancer; they
9 only care about competition.

10 The fact that their test did not cover tens of
11 thousands of cancer patients whose only hope for
12 detection was our test, And they're talking about
13 pounding us to prevent us from entering the market and
14 preventing those patients from having access to our
15 life-saving test.

16 And it goes on.

17 I mean, we have dozens of these emails
18 throughout the case.

19 This is the "Lunar War Room," Which is, again,
20 targeting our product, Reveal.

21 It says, "We should get updates at least two
22 times a week and meet weekly. Number one priority: This
23 can crush our growth and completely derail us if we mess
24 up here. We need to go to the mat here," again.

25 And here's another example:

1 "The key is to cut off GH at the pass and to get
2 patients on Signatera prior to onc" -- meaning,
3 oncologist -- "decision."

4 So the goal was to get these patients using
5 Signatera before their oncologist had a choice to use
6 our product.

7 This is Dr. Kevin Masukawa. He is the VP of
8 marketing.

9 And, again, he's talking about "War Solar" which
10 is the anti-Guardant campaign.

11 He said, "We need to come up with more -- with
12 some more innovative ideas to blunt Guardant."

13 And they even -- I showed you they had a
14 competition of who could come up with the most
15 anti-Guardant ideas in the company.

16 I don't know if they had, like, a party and gave
17 out free pizza or what the deal was, but this was the --
18 the corporate culture inside -- inside the Natera.

19 JENNIFER KELLER: He was the most fun to cross
20 examine, I will say, perhaps, or the CEO, Mr. Chapman,
21 who had a canned answer no matter what question you'd
22 ask him.

23 If you said, "Sir, is it Monday?" he would say,
24 "We had no choice but to educate the public and
25 oncologists about [inaudible]" --

1 (Laughter elicited.)

2 JENNIFER KELLER: -- to the point where I
3 finally said, "Is that just a canned answer you've been
4 practicing to just give to whatever question I ask?"

5 "Objection. Argumentative."

6 And the Judge said, "Overruled."

7 (Laughter elicited.)

8 JENNIFER KELLER: "You have to answer the
9 questions they ask."

10 So that was -- that was fun.

11 But Dr. Masukawa made some admissions.

12 He was the head of oncology marketing, and so he
13 was right at the epicenter of their "Kill Reveal, and
14 take this cancer test away from these patients who need
15 it."

16 And that was -- that was, I guess, in some weak
17 moments he made some admissions that he probably
18 regretted. And he tried to walk back a little bit at
19 trial, and it didn't work out too well.

20 CHASE SCOLNICK: So let's talk about those
21 innovative ideas that Natera came up with.

22 Their project Solar resulted in a three-part
23 campaign that included suppressing researchers' findings
24 on Reveal's strong performance, pressuring Medicare to
25 deny access to Guardant's lifesaving test and

1 carpet-bombing cancer doctors with false advertisements.

2 JENNIFER KELLER: "Carpet bombing" [inaudible]
3 was [inaudible].

4 (Inaudible background sounds.)

5 CHASE SCOLNICK: So first is [inaudible].

6 I'd like to play some testimony of
7 Dr. Aparna Parikh and Dr. Ryan Corcoran.

8 JENNIFER KELLER: These two doctors are in the
9 forefront of blood-only cancer detection biopsies. They
10 are absolutely brilliant.

11 Dr. Corcoran is tenured and has his own lab at
12 Harvard;

13 Dr. Parikh is an up-and-comer, brilliant young
14 woman, but she did not yet have tenure; so she was in a
15 more precarious position than Dr. Corcoran.

16 So what -- what Natera did, finding out that the
17 Journal of the Clinical Oncology was going to publish
18 their -- their clinical study [inaudible] value in the
19 [inaudible], they decided to try to persuade the
20 Journal, the [inaudible] not to run it.

21 (Inaudible background sounds.)

22 JENNIFER KELLER: So they put a huge amount of
23 pressure on the Journal of Clinical Oncology, all behind
24 the scenes, and they were doing it anonymously and
25 telling them that these "doctors were terrible; they did

1 terrible work; they didn't know what they were doing;
2 They had, you know, tainted samples."

3 They really attacked them as researchers. They
4 had -- they had done nothing wrong.

5 And the Journal of Clinical Oncology declined to
6 be bullied like that.

7 Dr. Corcoran was particularly shocked that any
8 company would do this because he had never heard of it
9 before.

10 (Representation was made that the
11 deposition testimony of Ryan Corcoran,
12 M.D., Ph.D., was played as follows:)

13 QUESTION: Could you read for the jury your
14 response?

15 ANSWER: Yeah, my response to Dr. Parikh was
16 that this is super inappropriate, and I'm glad that the
17 Journal directed them to us.

18 And I made the point that trying to undermine
19 the study, you know, under the veil of anonymity was
20 super shady.

21 QUESTION: Do you stand by that belief that that
22 was really inappropriate and super shady?

23 ANSWER: I would say that this is probably the
24 most inappropriate thing I've ever seen a company do to
25 any study I've been involved in my entire career.

1 (Representation was made that the
2 deposition testimony of Ryan Corcoran,
3 M.D., Ph.D., concluded.)

4 JENNIFER KELLER: And what they did is they went
5 after Dr. Parikh first. They waited until Dr. Corcoran
6 was gone and they went after Dr. Parikh and they tried
7 to bully her.

8 They were the 300-pound gorilla in the room in
9 terms of these tests. They were the only ones who had a
10 test for colorectal cancer at the time. And if they
11 didn't fund her, if they withdrew her grants, if they
12 took away any money for her lab, that was it. And they
13 were very, very heavy-handed.

14 So Dr. Corcoran was pretty upset that they would
15 do that to a junior faculty member. And he felt that
16 they should at least have the decency to come to him,
17 the senior person, and raise with him any problems that
18 they had.

19 CHASE SCOLNICK: But not only did they attack
20 Dr. Parikh, they also went directly to the Journal,
21 under the cloak of anonymity, and they claimed to be
22 concerned scientists, and they asked for the letters to
23 be edited -- I'm sorry, the Journal to be edited or
24 retracted.

25 And that had a profound impact on Dr. Parikh,

1 who is a scientist and a -- and a doctor, who's focused
2 on curing cancer and advancing research, And this is Dr.
3 Parikh's reaction:

4 (Representation was made that the
5 deposition testimony of Aparna Parikh,
6 M.D., played as follows:)

7 QUESTION: How did it make you feel, as a
8 professional, to have to respond to a letter to the
9 editor like this?

10 ANSWER: Again, it really bothered me and made
11 me sort of, like, question why we're doing what we're
12 doing, and are we -- like, you know, we -- we think
13 we're trying contribute to the field and to patient
14 care, and it feels entirely demoralizing.

15 And, you know, we're coming out of kind of
16 pandemic and all the demands of, like, sick patients and
17 GI cancers and clinical demands, and just to feel like
18 something we were trying to do just to add value for
19 patients is just sort of being attacked and not -- and,
20 like, not letting us just do our work and dragging us in
21 just felt, like, entirely upsetting.

22 (Representation was made that the
23 deposition testimony of Aparna Parikh,
24 M.D., concluded.)

25 JENNIFER KELLER: The Journal of Clinical

1 Oncology did not bow to the pressures and refuse to
2 publish the article, but they did give a bow to the
3 extent of publishing Natera's letter to the editor
4 attacking Drs. Corcoran and Parikh and their study.

5 However, they also allowed Drs. Corcoran and
6 Parikh to publish right next to that their response,
7 which was devastating and really showed that Natera was
8 absolutely in the wrong here.

9 But that's the lengths they were willing to go
10 to try to destroy these young doctors' career, smear
11 them, go after them, threaten to withhold grant money.
12 Really, all-out warfare. They didn't care what it took
13 to win.

14 CHASE SCOLNICK: But it gets better.

15 (Laughter elicited.)

16 CHASE SCOLNICK: So not only did they try to
17 intimidate and pressure the scientific journals and
18 these doctors, they also tried to pressure Medicare to
19 deny access to Guardant's lifesaving test.

20 Let me give you some examples here.

21 JENNIFER KELLER: Also, behind the scenes and
22 without anybody knowing about it.

23 CHASE SCOLNICK: And what Natera did is they
24 went to an organization called MolDx.

25 And this is -- this is the organization that

1 screens these medical diagnostic tests for -- for
2 Medicare.

3 And they back-channeled these false claims. The
4 same false claims they made in our case, by the way.
5 And they tried to persuade them to deny coverage to --
6 to all these people.

7 And, again, why that's so offensive is the folks
8 who are on Medicare are some of the most desperate and
9 destitute in our country. Right. They're folks who
10 can't afford to pay out of pocket.

11 And when you put that in the context of there
12 being 30 percent of people or up to 30 percent of people
13 who cannot use Natera's test and then to try to deny
14 those folks coverage, or any access, to the only test
15 that worked with them is particularly egregious.

16 So, at trial, again, as they had to come up with
17 some explanation, at trial, Natera's witnesses claimed
18 that they were doing this because our test wasn't safe
19 or because they were trying to protect the public or be
20 stewards of -- of tax dollars.

21 But, of course, none of that was true because
22 the internal emails told a very different story.

23 JENNIFER KELLER: Yes.

24 And, of course, if you really do want to air
25 concerns about a test, you would want it to be out in

1 the open where everybody can comment. You wouldn't be
2 trying to stab somebody in the back where they don't
3 even know about it.

4 And -- and it was a problem for a while.
5 Guardant couldn't figure out what was happening. "Why
6 were they being slowed down?" They didn't know.

7 The jurors knew, though. They got to see the
8 whole thing.

9 CHASE SCOLNICK: Right.

10 And this email says it all, really, that we got
11 from Mr. Chapman, who was really a gift throughout the
12 trial.

13 (Laughter elicited.)

14 CHASE SCOLNICK: And, again, this wasn't about
15 public health. It wasn't about public welfare. It
16 wasn't about concern that our test or product was
17 somehow unsafe or inferior. It was about money. It was
18 about the bottom line. It was about greed because
19 that's -- that's what the evidence showed that Natera
20 cared most about.

21 And so here you have a text from Mr. Chapman:

22 "Reveal is making massive progress in Florida.
23 They are everywhere. We need to make sure our Medicare
24 plan is on point."

25 And, again, what was their Medicare plan?

1 The evidence showed that their Medicare plan was
2 to try to persuade Medicare from denying coverage for
3 our test.

4 JENNIFER KELLER: Secretly. Secretly.

5 CHASE SCOLNICK: Behind the scenes.

6 But -- oh.

7 JENNIFER KELLER: This -- this was fun. Okay.

8 I apologize in advance that all my cross
9 questions ended with "Right? Right?" [Inaudible].

10 (Laughter elicited.)

11 CHASE SCOLNICK: Yeah. We've got two different
12 screens. I'm sorry.

13 So this was what I was referring to earlier, the
14 Medicare plan being on point and Mr. Chapman.

15 And then -- here you go.

16 JENNIFER KELLER: Okay. Here's the apology
17 part.

18 And so I asked Dr. Masukawa, "Would it be a good
19 outcome for your company, for Natera, if MolDx did not
20 approve Guardant's application for coverage; right?"

21 He said, "That is true."

22 (Laughter elicited.)

23 JENNIFER KELLER: "QUESTION: Now, Signatera is
24 not an option for patients without sufficient tumor
25 tissue for the Signatera test; right?"

1 "ANSWER: That is correct."

2 "QUESTION: And so, and then, of course, not all
3 patients could pay for it out of pocket?"

4 "ANSWER: That's correct."

5 "QUESTION: Most of them are going to need
6 insurance or Medicare coverage?"

7 "ANSWER: Yeah. Sure. Yes."

8 "QUESTION: But, of course, it was a good
9 outcome for the company to deprive those people of any
10 test?"

11 That was not well received by the jurors. Some
12 of them, like me, were on Medicare.

13 CHASE SCOLNICK: I'm only a few years away
14 myself. So...

15 (Laughter elicited.)

16 JENNIFER KELLER: I know. I was particularly
17 outraged.

18 CHASE SCOLNICK: Okay. But, ultimately,
19 Medicare did approve coverage for Reveal. And in doing
20 so, they considered all the same arguments -- or many of
21 the same arguments that Natera advanced to the jury and
22 rejected them, which is an important point.

23 So they had the -- some of the world's leading
24 experts consider the same false statements, the attacks,
25 that -- that were levied on the jury and rejected them.

1 I think was a -- was a good point.

2 JENNIFER KELLER: I want to make one point about
3 the prong "Carpet-bomb cancer doctors with false
4 advertisements."

5 Remember earlier the CEO of Natera, Steve
6 Chapman, said, "Spend whatever it takes." They did.

7 CHASE SCOLNICK: And if there's one ally that
8 all companies in this space should have it's oncologists
9 because oncologists are on the frontlines. They're the
10 people who sacrifice many years of their lives to go to
11 medical school and to treat people who are -- who are
12 suffering from cancer.

13 So, of course, to Guardant, they are allies.
14 They are on the frontline. But to Natera, this is how
15 they referred to them internally in emails.

16 JENNIFER KELLER: Like they're cattle: "Ring
17 fence all the oncologists and hit their social web very
18 hard."

19 But it -- it was actually worse because they
20 said their algorithms are pretty sophisticated in terms
21 of tracking people. They're -- the people they hired,
22 Natera hired. They're pretty good at tracking people
23 based on cell phone, IP information combined with public
24 data on the location of their home and workplace.

25 Nice.

1 So they were spying on oncologists at home, in
2 their workplace, their IP addresses. It could be their
3 kids doing their homework. It didn't matter.

4 That was also not well received by the jury.

5 CHASE SCOLNICK: And what did they do with all
6 that information? How did they leverage it?

7 Well, take a look at this massive advertising
8 campaign.

9 JENNIFER KELLER: They spent almost 25 million
10 dollars in one year sending over 100,000 emails to
11 oncologists. They called it the "drip campaign" because
12 they would send it out at different intervals. All
13 attacking our product. Over 20,000 of our top doctors
14 were [inaudible] our product.

15 (Inaudible background sounds.)

16 JENNIFER KELLER: And then they gave -- they
17 outfitted their sales reps with these little tablets
18 that had massive attacks on them. And, in fact, they
19 were told not to print those and not to leave those
20 tablets behind.

21 And we can only imagine how bad those attacks
22 were.

23 But 25 million in a year. And our -- one of our
24 founders, Dr. Eltoukhy, when he was on the stand, he
25 found out for the first time about this because this has

1 all been attorneys' eyes only, confidential. And so he
2 didn't know -- the other [inaudible] didn't know that
3 this amount had been spent.

4 And he was, obviously, stunned when he saw it,
5 and said, "That's more than we spent in our whole launch
6 of our product."

7 And, yeah, all to "Educate the public about this
8 really scary product."

9 CHASE SCOLNICK: So the first strategy that we
10 laid out was simplifying this very complex comparison
11 and turning it into these compelling stories.

12 And the story that we've told to you today is an
13 abbreviated version of what we told to the jury. And
14 there were many more emails. But it was very helpful
15 for us to lay this out as part of a three-pronged
16 approach because it provided context to something that
17 was far more difficult to understand and technical.

18 So our next strategy we used was graphic
19 representations.

20 Remember, we started off with this very complex
21 comparison ad. And, again, on the left side, we have
22 Signatera; on the right side, we have Reveal. And just
23 by looking at this, the left side, Signatera, looks far
24 better than the right side. Okay. And what we have
25 here are a number of footnotes.

1 So all the numbers on the left --

2 UNIDENTIFIED SPEAKER: [Inaudible].

3 CHASE SCOLNICK: Okay. Thank you.

4 Okay. I think it's up. Okay.

5 Oh, sorry. I appreciate that. So, sorry.

6 Starting over again.

7 We've got the comparative ad, you've seen it a
8 few times, Exhibit 126 at trial.

9 And on the left side, you have Natera; on the
10 right side, you have Guardant.

11 And the left numbers are based on Natera's
12 study; and the right -- the numbers on the right side
13 are based on the Guardant's study.

14 So rather than try to tackle each one of these
15 numbers and address them, the -- the hazard ratio, and
16 the confidence intervals, things that would be very,
17 very complex and difficult to explain to the jury in a
18 20-hour chess-clock trial, we looked for a common theme.

19 And there was a fundamental difference between
20 those two studies that made this a very unfair
21 comparison. And that was -- [inaudible]. Okay. If you
22 look, you have -- on the left side that would be the
23 Natera's study; and the farthest on the right side would
24 be our study.

25 But what they're not showing is that the amount

1 of blood between the two trials are very different. In
2 fact, Natera's study had twice the amount of blood per
3 sample as ours. And that's very significant in this
4 space.

5 JENNIFER KELLER: The Signatera study, they
6 wouldn't allow any samples of less than 8.5 milliliters
7 of blood.

8 Our -- our samples were taken from real-time,
9 actual doctors gathering them with patients.

10 The difference -- it's a huge difference of how
11 much blood you have. The more blood you have, the more
12 likely you are to be able to find that circulating tumor
13 DNA.

14 And one of our oncologists said, "Hey, if you
15 have a two-story house and you lose your cell phone,
16 your chances of finding it are a lot greater if you can
17 search both stories. If you're only allowed to search
18 one story, you might not see it."

19 And so...

20 CHASE SCOLNICK: Which brings us to our next
21 topic, which is analogies.

22 JENNIFER KELLER: Yes.

23 CHASE SCOLNICK: Right.

24 So one that I used in our case was the example
25 of a car ad. Right.

1 We've got two different cars: Pickup Truck A;
2 Pickup Truck B. And if you look at the advertisement,
3 you can stop here and say, "Well, Car A is better than
4 Car B because, man, it gets 300 miles, and Car B only
5 gets 200 miles," but what they're not telling you is
6 that the 300 miles is based on the full tank of gas; and
7 Pickup Truck B, the 200 miles is based on half tank of
8 gas. So it's actually more fuel efficient or it gets --
9 it gets better mileage. Right.

10 And this is the analogy to our test because, of
11 course, their test had seemingly better numbers, but it
12 was based on twice the amount of blood.

13 JENNIFER KELLER: And under the Lanham Act false
14 advertising case law, apples-to-oranges comparisons are,
15 per se, misleading.

16 So you have to have -- if you're gonna have
17 comparative advertising, it has to be apples to apples
18 or oranges to oranges. That's actually the language in
19 the case law.

20 (Laughter elicited.)

21 CHASE SCOLNICK: Which brings us to our next
22 topic: "Relatable Language." Right.

23 This -- this case was so rich with these complex
24 scientific concepts that no one could understand or had
25 ever heard of that we wanted to make it more relatable

1 And apples to oranges was a wonderful example.

2 So early in the case, we started using the
3 language of "apples to oranges."

4 Here are two -- the testimony one -- here's the
5 testimony of two of our witnesses.

6 The vice president of clinical development on
7 the left. Justin Odegaard.

8 "QUESTION: And to be clear, the comparison that
9 Natera used between the two tests that was sent to all
10 these doctors is that an apples-to-apples comparison?"

11 "ANSWER: No, it is not."

12 And, again, on the right side:

13 "QUESTION: Do you think that this was a
14 misleading apples-to-oranges comparison?"

15 "ANSWER: Yes."

16 This is one of our favorite slides.

17 So this is actually Dr. Claus Andersen.

18 Dr. Claus Andersen was the lead author for
19 Natera's study. And he is a researcher from Aarhus
20 University in Denmark.

21 So he had important testimony to give, and we
22 appreciated that.

23 And, although, this case was pending for a
24 number of years and we came in shortly before trial, he
25 had not been deposed. So one of the things we wanted to

1 do when we came in is to depose him, and we secured this
2 good testimony for trial.

3 And Natera tried to move heaven and earth to
4 prevent us from doing so. And the tactics are really
5 extreme. Right.

6 So we finally got -- got the avenue to get in
7 front of a Danish judge. And it was in Copenhagen.

8 And Natera told the Danish judge that the --
9 even though there's a letter authorizing the deposition,
10 Natera had represented that it was unauthorized, that
11 this was beyond the scope of the Judge's letter.

12 So we had to go back to Judge Chen in the
13 Northern District, and he had to confirm that this was,
14 in fact, allowed.

15 And then Natera told the judge in Denmark that
16 American counsel -- American counsel cannot ask
17 questions because, under Danish code, it has to be a
18 Danish attorney.

19 So they said, "Okay. Fine."

20 And the next step was, "Well, because you're
21 using Danish attorneys, they haven't signed a protective
22 order." So, "They can't ask me in the United States --
23 yeah, in the United States, so they can't ask any of the
24 relevant questions. The people that we said had to ask
25 the questions can't ask the questions they need to ask."

1 JENNIFER KELLER: And they can't see any
2 documents.

3 CHASE SCOLNICK: Oh, yeah. So, of course, that
4 was rejected.

5 And then I flew out to Denmark. And it was very
6 accommodating, really. There was no space in
7 Copenhagen. There was no space in Aarhus. So I found
8 myself -- found myself in rural Denmark at a small port.

9 And -- And, again, wonderful people. We took
10 over, basically, the whole courthouse.

11 But once we were there, Natera, of course,
12 was -- was saying that the European Union Conventions
13 prevented them from disclosing any of the important
14 material.

15 Of course, that was rejected.

16 So we end up with this transcript in -- in
17 Danish, because that's what they demanded, and then we
18 come back to the United States and tried to use this
19 wonderful testimony.

20 And they said, "Well, the translation's wrong,
21 Judge. We can't use it."

22 And we said, "Okay. Why is it wrong?"

23 "Well, we don't know why it's wrong. We have no
24 example. We have no alternative translation. But it's
25 wrong. And you can't use it."

1 So, of course, after all those steps, we finally
2 were able to present Dr. Claus Andersen's testimony.

3 And we asked him the same questions. It wasn't
4 apples to oranges.

5 Apparently, they have a lack of citrus fruits --
6 (Laughter elicited.)

7 CHASE SCOLNICK: -- in Denmark -- or
8 Scandinavia. But it was "apples to pears" because
9 that's a thing there.

10 So he confirmed that it was, in fact, apples to
11 pears. And this is from the horse's mouth. Right. You
12 have their own lead author of their study confirming
13 that it was apples to pears, or apples to oranges.

14 JENNIFER KELLER: And that would be very unfair.

15 CHASE SCOLNICK: Right.

16 But, by the way, that's not all he said. When
17 we were there, he also told us that many of the claims
18 made in the Natera's study, those on the left side of
19 that advertisement, were -- well, how do I say it? --
20 they weren't entirely accurate.

21 Natera claimed that their study was blinded,
22 which is a big deal in this space, whether you know the
23 results of the study before you're conducting it,
24 whether you know who's going to recur or not recur
25 before you start writing the blood samples.

1 And, of course, Natera represented that they did
2 not know. That wasn't exactly true.

3 He also provided testimony that Natera's numbers
4 were based, in part, on running a test other than their
5 own, in certain forms.

6 JENNIFER KELLER: Ouch.

7 (Laughter elicited.)

8 JENNIFER KELLER: Back to Dr. Masukawa:

9 "QUESTION: When communicating with the sales
10 force about this performance review, you indicated these
11 were apples-to-apples comparisons, didn't you? Your on
12 the sales force, what were they told?"

13 "ANSWER: Yes, in terms of the metrics we were
14 looking at."

15 "QUESTION: So if the sales representatives went
16 around saying, 'Look, this is an apples-to-apples
17 comparison and Signatera outperforms Reveal,' that would
18 be wrong; right?"

19 "ANSWER: That would be a mischaracterization."

20 This was their director of oncology marketing.

21 CHASE SCOLNICK: So, as I'm sure you can
22 imagine, during closing argument, we had a huge fruit
23 basket on our table.

24 (Laughter elicited.)

25 CHASE SCOLNICK: Apples, oranges, pears,

1 everything.

2 (Inaudible background sounds.)

3 CHASE SCOLNICK: [Inaudible].

4 JENNIFER KELLER: Yeah, the other thing that was
5 important to us was to establish a relationship with the
6 jury and credibility with the jury, because many times,
7 particularly if you're dealing with very dense silence,
8 the jurors really want to figure out who they can trust.

9 They may not understand all the science, but
10 they understand who you can trust.

11 Chase and I did almost all the questioning. Our
12 opponents had, I think, eight different lawyers doing
13 the questioning. But we felt we had a very good
14 relationship with the jurors.

15 And we also established credibility with our
16 witnesses. We spent a lot of time with our witnesses.
17 So they trusted us.

18 Because that's a tough thing. You know you're
19 going to get attacked. You know people are going to
20 come after you the way they come after your company.
21 "Can you trust your attorneys to protect you?"

22 And we also made it very clear to our witnesses
23 that they were not to use canned answers, that they were
24 to answer questions honestly, in a straightforward way.
25 If they had made a mistake, they would own it, apologize

1 for it and be honest about it. And they did.

2 So the contrast between the Natera witnesses
3 with all their canned answers, that really sounded like
4 they were being read off an index card, and our
5 witnesses was quite, quite remarkable. And the jurors
6 clearly bonded with our witnesses.

7 They also really liked Chase.

8 At the conclusion of the case, Chase had --
9 before the verdict, he had to be on vacation with his
10 family. So I was there with our opposing counsel, and
11 we were talking to the foreperson and one of the other
12 jurors, and I couldn't help but noticing that they would
13 address our opposing counsel as "Mr." or "Ms. Whatever,"
14 and then turn to me and say, "Where's Chase?"

15 (Laughter elicited.)

16 JENNIFER KELLER: "We'd really like to talk to
17 Chase, Jennifer."

18 (Laughter elicited.)

19 JENNIFER KELLER: I'm not sure if our opposing
20 counsel even noticed it, but I -- I sure noticed it. I
21 knew right then that we had established that
22 relationship.

23 CHASE SCOLNICK: Chase was on the beach in
24 Israel with his best friend.

25 (Laughter elicited.)

1 CHASE SCOLNICK: Celebrating the verdict.

2 Okay. This is an example of the ethos and of
3 the testimony that we presented.

4 This is one of our first witnesses for Guardant,
5 and -- and she made it clear that there's a contrast
6 between the advertising strategy at Natera, which is to
7 attack and demean and belittle their competitors, and
8 Guardant, "We don't do that at Guardant. We never
9 have." Right.

10 So if there's a competitor that has a product
11 that has an advantage, then, look, everyone wins.
12 That's what we're looking for. Right. Because this is
13 about cancer. And having more access, having more
14 accountability is good for every user. And I think that
15 really resonated with the jury.

16 JENNIFER KELLER: We know it resonated with the
17 jury because we saw the verdict form.

18 (Laughter elicited.)

19 CHASE SCOLNICK: One more -- one more strategy
20 here, which is, I believe, is on the next page.

21 Yeah, "Persuasive Themes."

22 So we're gonna look at this one.

23 And, again, this is something that we use
24 throughout the trial that really we're speaking on
25 behalf of the 30 percent of the tens of thousands of

1 people who couldn't use Signatera, the tens of thousands
2 of people around the world --

3 (Whereupon, the audio recording titled "New
4 Recording 316" concluded at timestamp
5 0:57:56, and audio recording titled "New
6 Recording 317" started at timestamp
7 0:00:00.)

8 JENNIFER KELLER: -- some serious misconduct
9 that occurred in that case by opposing counsel, who made
10 a number of misrepresentations, both to us and to the
11 Court, about a test that they -- a test that they, more
12 or less, very late in the game, said was critical and
13 should be admitted even though the discovery had closed,
14 and it was a blockbuster, and they hadn't known about it
15 until then, and they had just found out about it. And
16 their expert hadn't known either. He had just found out
17 about it.

18 And I love their expert's name: Dr. Hochster.

19 (Laughter elicited.)

20 JENNIFER KELLER: It turned out that not -- and
21 Dr. Hochster had -- he was keen that he had never had
22 any emails with the authors of this other study. It was
23 called the Cobra Study. "What Cobra Study?" You know,
24 he had heard of it, but he didn't have any involvement
25 in it. He had never had an email about it, not one, not

1 ever.

2 And they had had him search his emails, not once
3 but twice, and there weren't any emails. We didn't
4 believe it at all. We thought he had been very
5 involved.

6 And, ultimately, Chase said, "Hey, I know. We
7 made a motion to compel, and the magistrate judge, they
8 made the same representation to her, and she said, 'I
9 can't compel something that doesn't exist,'" Chase said,
10 "Hey, let's send discovery to Rutgers, who Hochster
11 worked for them, And we'll make it very limited. We're
12 down to the wire here. We don't have much time. So
13 we'll make it very limited."

14 Boom. Came back the initial transfer of
15 75 emails from Hochster, which we pointed out to the
16 Court, needless to say.

17 And the Court said, "What? What's going on?"

18 And our opponents said, "Well, Dr. Hochster
19 couldn't have found those. Rutgers was only able to
20 find these due to a server-level search that they did.
21 That poor Dr. Hochster just forgot that he was involved.
22 I mean, his search is fine [phonetic]."

23 So server-level access, I think, we said, "We
24 really need it. Your Honor, we would like to have a
25 forensic exam of his laptop and his desktop."

1 Of course: "No. That's outrageous."

2 Of course: "Granted."

3 (Laughter elicited.)

4 JENNIFER KELLER: So, the night before the
5 forensic examiner was supposed to do this work,
6 Dr. Hochster found out, lo and behold, gosh, he actually
7 did have all emails.

8 (Laughter elicited.)

9 JENNIFER KELLER: And it turned out he didn't
10 need server-level access, and he denied having been
11 asked twice to run searches for them, but here they all
12 were.

13 Gosh.

14 And then the opposing counsel said, "Well, we
15 had no way of knowing about this. We have no way of
16 knowing. You know, that this is news to us."

17 We didn't believe that either.

18 They started asserting privilege over a whole
19 bunch of these.

20 We asked the magistrate judge to please review
21 several, in particular, in camera.

22 We saw there was an email from the author of the
23 study to Hochster, and it turned out the author of the
24 study was a subordinate of Hochster's. That he had
25 twisted his arm to send him a summary of the study when

1 it was embargoed and no one but the three examiners was
2 supposed to have it.

3 And we then saw that the very next day there was
4 an email with an attachment that went to the very person
5 of opposing counsel who said they had no clue. Right.

6 So we asked the magistrate judge to examine it.

7 And they said, "This is an outrage. No."

8 "Granted."

9 (Laughter elicited.)

10 JENNIFER KELLER: And she came out afterwards
11 and -- and said, essentially -- I don't remember her
12 exact words but "It appears that this Court has been
13 lied to, and Judge Chen has been lied to. And, of
14 course, this summary had been sent to opposing counsel
15 months earlier. And -- By Hochster, who was trying to
16 manipulate his subordinate."

17 So don't take our word for any of the findings.
18 Take a look at what Judge Chen found.

19 Who, by the way, is one of the nicest and most
20 patient judges I've ever been in front of. To the point
21 where sometimes I would just say, "Oh, don't be so
22 patient."

23 (Laughter elicited.)

24 JENNIFER KELLER: But he was really pretty
25 horrified because I don't think he ever expected that of

1 counsel of that caliber.

2 CHASE SCOLNICK: And just some of the highlights
3 here. Because there were many of these.

4 It says, "Quinn Emanuel's conduct, simply put,
5 was unjustified, unacceptable, and sanctionable."

6 Quinn Emanuel.

7 (Laughter elicited.)

8 CHASE SCOLNICK: "Quinn Emanuel did not simply
9 fail to connect the dots thus were patently connected.
10 And Quinn Emanuel knowingly hid the connection from
11 Guardant and from this Court."

12 JENNIFER KELLER: "While the Court labeled
13 Natera's counsel a fool for purportedly believing
14 Dr. Hochster's testimony, it turns out that counsel was
15 more than foolish."

16 "Quinn Emanuel deliberately and knowingly misled
17 this Court."

18 "Dr. Hochster and Quinn Emanuel on behalf of
19 Natera made misleading and false statements to
20 Judge Kim, Guardant, and the undersigned. These false
21 and misleading statements that Dr. Hochster had no
22 documents, when they had full knowledge of truth to the
23 contrary, and those misleading statements of untruth
24 were used to gain a litigation advantage."

25 And the Court found that evidentiary sanctions

1 were warranted. The study was excluded. Hochster's
2 testimony about it was excluded.

3 Counsel then said that they still wanted to use
4 Dr. Hochster on related issues.

5 And I, drawing quickly on my criminal law
6 background, said, "Your Honor, in that case, we would
7 ask that the Court instruct the jury that Dr. Hochster
8 has lied deliberately to two federal judges in this very
9 case and that a witness willfully false in one area may
10 be disbelieved in every other area."

11 And he said, "Draft it, Ms. Keller."

12 I said, "Happily," and before I could even
13 finish my draft, he had been withdrawn as a witness.

14 (Laughter elicited.)

15 JENNIFER KELLER: So the criminal law background
16 does come in handy.

17 (Laughter elicited.)

18 JENNIFER KELLER: But -- but there are further
19 sanctions coming.

20 Judge Chen has made it clear he's going to award
21 attorney's fees for the months that we spent chasing
22 this -- this non-existent, fabulous, groundbreaking
23 study, which he also found was misrepresented
24 substantively. It didn't say what they said it said.

25 And then he's going to have further sanctions --

1 according to his order, he's going to explore exactly
2 who was responsible, and he's going to report that to
3 the appropriate authorities.

4 So, the truth will out, you know, eventually, if
5 you're -- if you're dogged enough.

6 But I'll tell you, the person who was dogged is
7 sitting to my left. It wasn't me. It was Chase. He
8 wouldn't give up. He kept saying, "I know this is
9 false. I'm going to find it out. I'm going to prove
10 it."

11 And we said, "But you need to sleep."

12 (Laughter elicited.)

13 JENNIFER KELLER: He said, "I only need two
14 hours a night."

15 I said, "You have to quit drinking Monster
16 Energy drinks."

17 (Laughter elicited.)

18 JENNIFER KELLER: I didn't want him to have a
19 meltdown in the middle of trial.

20 No, he wouldn't give up. He was like a dog
21 working a bone, and he unearthed all this.

22 And it was very disappointing to me in my --
23 what am I now? -- 47th year as an attorney. Having
24 often, in the vast majority of my career, dealt with
25 very honorable opposing counsel. And in criminal cases,

1 you know, I would sometimes have a handshake agreement
2 with the prosecutor that, "Okay" -- I sat down in a
3 murder trial one time. The DA and I went over
4 everything beforehand, And he said, "Yeah, you're right
5 about this, that should be excluded. I won't put that
6 in."

7 And I said, "You're right about this question.
8 I don't want to ask that."

9 I think there were two objections in a whole
10 murder trial, which, I mean, he might have changed his
11 mind afterwards about our -- our motions practice, but I
12 was used to that level of civility.

13 And most of the civil litigators that we have
14 dealt with have also been honorable. And this was just
15 really disappointing, very, very disappointing as an
16 officer of the Court.

17 And the disrespect shown to Judge Chen and
18 Judge Kim, in many ways, not just by this but, talking
19 over the Judge on the stand and rolling their eyes at
20 things that he said.

21 And I don't think that -- I don't think that
22 that's necessarily appreciated by the jury either.

23 But, any event, you know, the right thing
24 happened. The company was a little bit surprised,
25 especially us versus a very large group of lawyers from

1 an international law firm that were pretty relentless.

2 And -- but the right thing happened. And it's
3 what our system's all about. The honorable company that
4 exists to cure cancer won. That's it.

5 (Applause.)

6 JENNIFER KELLER: And stay tuned.

7 (Laughter elicited.)

8 (Inaudible background sounds.)

9 (Whereupon, the audio recording titled "New
10 Recording 317" concluded at timestamp
11 0:10:06.)

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1 STATE OF CALIFORNIA)
2 COUNTY OF LOS ANGELES) SS.
3

4 I, Whitney Hester, CSR No. 14658, in
5 and for the State of California, do hereby certify:

6 That the foregoing is a true and accurate
7 transcription of the audio recording provided to me done
8 to the best of my ability;

9 That I am neither attorney or counsel for nor
10 related to any of the parties of said matter;

11 Furthermore, that I am not a relative or
12 employee of any attorney or counsel employed by the
13 parties hereto or financially interested in the action.

14 IN WITNESS WHEREOF, I have hereunder serve my
15 hand this 17th day of April, 2025.
16
17

18 
19

20 Whitney Hester, CSR No. 14658
21 for the State of California
22
23
24
25

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